

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR 1997-010394

08/04/2016

HONORABLE CHRISTOPHER COURY

CLERK OF THE COURT
N. McKinney
Deputy

STATE OF ARIZONA

SCOTT WAYNE BLAKE

v.

STEVE NOLTE (A)

TYRONE MITCHELL

VICTIM WITNESS DIV-AG-CCC

RULING

The Court has reviewed and considered Defendant's *Motion for a New Trial* and *Motion to Extend Time for Filing of Motion for New Trial* both filed July 1, 2016, as well as the *State's Response to Defendant's Motion for New Trial*, filed August 2, 2016. Defendant claims he is entitled to a new trial under Rule 24.1 of the Arizona Rules of Criminal Procedure. For the following reasons, the Court disagrees.

1. The Court Is Without Jurisdiction to Grant Relief for This Motion.

The time limit for filing a motion for a new trial is “. . . mandatory and must be obeyed by the courts as well as by the parties.” *State v. Hill*, 85 Ariz. 49, 53–54 (1958); *see also State v. Merolle*, 227 Ariz. 51, 54 (App. 2011) (holding Arizona Rule of Criminal Procedure 24.1 as jurisdictional). A court has no authority to extend the time for filing a motion for new trial beyond the period allowed by statute. *State v. Hill* at 53-54; *see also* Comment to Ariz. R. Crim. Pro. 24.1(b). The time limit established by Rule 24.1(b) for filing a motion for new trial is no later than ten days after the verdict has been rendered.

Here, Defendant filed both Motions on July 1, 2016. The jury convicted Defendant on May 24, 2016. Defendant therefore was beyond the ten day period for filing a timely motion for new trial. The Court is jurisdictionally barred from extending the time deadline for Defendant to file his motion for new trial. Because the Motions are untimely, the Court is without jurisdiction to consider the Motions.

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2. There Is No Merit To Defendant's Underlying Argument.

The decision to grant a new trial is discretionary. State v. White, 56 Ariz. 189 (1940). It is an abuse of discretion to grant a new trial only if evidence fully sustains the conviction and there is neither mistake of fact nor law in the trial. State v. Duguid, 50 Ariz. 276 (1937).

Here, even had Defendant timely filed his Motion and even if the Court had jurisdiction to consider the merits of the motion for new trial, he does not articulate a colorable claim for the Court to grant relief. Defendant does not allege new facts that would make a rationale trier of fact question the jury's findings. Rather, Defendant alleges the verdicts were inconsistent. Specifically, Defendant asserts that he could not have been guilty of the Fraudulent Schemes and Artifices and Theft charges while simultaneously being acquitted on the Forgery charges.

An inconsistent verdict does not entitle a defendant to a new trial. Assuming *arguendo* that the verdicts were inconsistent, this would not necessarily justify a new trial because “. . . consistency between the verdicts on the several counts of an indictment is unnecessary.” State v. Zakhar, 105 Ariz. 31, 32 (1969); State v. Webb, 186 Ariz. 560 (App. 1996). Here, even if the verdicts were inconsistent, this does not subject the verdicts to challenge because Arizona law does not require juries to reach consistent verdicts.

Factually, the verdicts are not inconsistent. Under Arizona law, allegedly inconsistent jury verdicts will be upheld when they may be reconciled by a differing interpretation and there is evidence for a jury's finding. State v. Harvey, 193 Ariz. 472, 475 (App. 1998). Here, reasonable jurors could have concluded that Defendant intentionally retained and possessed funds belonging to Fulton Homes by keeping the money deposited into his account and wired into his account at another bank pursuant to a scheme or artifice to defraud, while simultaneously concluding that the State had not proven that Defendant was the person who actually forged and deposited those checks. The Forgery charges were not necessary to sustain the Theft and the Fraudulent Schemes and Artifices charges, and the verdicts are not inconsistent.

For the foregoing reasons, and good cause appearing,

IT IS ORDERED denying Defendant's *Motion for New Trial* and *Motion to Extend Time for Filing for New Trial*.

IT IS FURTHER ORDERED affirming all future court hearings.